
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff,

v.

BARRY DEE BENNETT,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT’S
MOTION TO DISMISS

Case No. 2:24-CR-205-TS

District Judge Ted Stewart

This matter is before the Court on Defendant’s Motion to Dismiss Count II of the Indictment.¹ For the reasons explained below, the Court will deny the Motion.

On or about June 19, 2024, law enforcement officers executed a search warrant on Defendant Barry Bennett’s residence. During the search, officers allegedly discovered six firearms and a distributable amount of methamphetamine. Defendant was subsequently charged with Possession of Methamphetamine with Intent to Distribute in violation of 18 U.S.C. § 841(a)(1) (Count I) and Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. 922(g)(1) (Count II).² Defendant moves to dismiss Count II on the grounds that Section 922(g)(1) is unconstitutional, as applied to him, under the Supreme Court’s decisions in *New York State Rifle & Pistol Association, Inc. v. Bruen*³ and *United States v. Rahimi*.⁴

In support of his position, Defendant argues that, in *Rahimi* “[p]ossessing a weapon in a menacing or threatening manner was . . . a threshold for *why* the prohibition was relatively

¹ Docket No. 47.

² Docket No. 1.

³ 597 U.S. 1 (2022).

⁴ 602 U.S. 680 (2024).

similar with laws around the time of our nation’s inception.”⁵ Because Defendant was found to be possessing firearms “passively” and not in a manner threatening to others, and because his criminal history includes only non-violent and dated crimes, Defendant argues § 922(g)(1) is unconstitutional as applied to him.⁶

Since the time Defendant filed the instant Motion, the Tenth Circuit issued its decision in *Vincent v. Bondi*,⁷ wherein the Tenth Circuit “upheld the constitutionality of § 922(g)(1) without drawing constitutional distinctions based on the type of felony involved.”⁸ In reaching this conclusion, the Tenth Circuit considered whether the *Rahimi* decision required the Court to depart from its decision in *United States v. McCane*,⁹ which found § 922(g)(1) to be constitutional “without drawing constitutional distinctions between the type of felony involved.”¹⁰ Upon finding that *McCane* had not been “indisputably and pellucidly abrogated” by *Rahimi*, the Tenth Circuit concluded that “the Second Amendment doesn’t prevent application of § 922(g)(1) to nonviolent offenders like [the defendant].”¹¹ Based on this clear and controlling precedent from the Tenth Circuit, the Court concludes that § 922(g)(1) is constitutional as applied to Defendant and will, accordingly, deny his Motion to dismiss Count II.

⁵ Docket No. 47, at 6.

⁶ *Id.*

⁷ 127 F.4th 1263 (10th Cir. 2025).

⁸ *Id.* at 1266.

⁹ 573 F.3d 1037 (10th Cir. 2009).

¹⁰ *Vincent*, 127 F.4th at 1266.

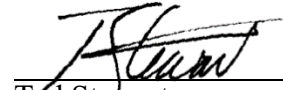
¹¹ *Id.*

It is therefore

ORDERED that Defendants' Motion to Dismiss (Docket No. 47) is DENIED.

DATED this 9th day of April, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. Stewart", is written over a horizontal line.

Ted Stewart
United States District Judge